

Bindu vs Robin Mathew @ Robin

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Court : Kerala

Decided On : Jun-21-2024

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : MACA/4/2019

Appellant : BINDU

Respondent : Robin Mathew @ Robin

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN FRIDAY, THE 21ST DAY OF JUNE 2024 / 31ST JYAISHTA, 1946 AGAINST THE AWARD DATED 25.04.2018 IN O.P (MV) NO.156 OF 2012 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL - II, ALAPPUZHA APPELLANT/PETITIONER :- BINDU, AGED 40 YEARS W/O.JINSON THOMAS, CHENNITHALA HOUSE, 8TH WARD, CHANGANSSERY P.O., KOTTAYAM. BY ADVS. GEORGE VARGHESE(PERUMPALLIKUTTIYIL) SRI.A.R.DILEEP SRI.P.J.JOE PAUL RESPONDENTS/RESPONDENTS :- 1 ROBIN MATHEW @ ROBIN S/O.MATHEW, MEKKUNNEL HOUSE, VADAMKUZHIL HOUSE, 7TH WARD, VENGOLA P.O., MARIKA, ERNAKULAM. 2 THE

ORIENTAL INSURANCE CO.LTD., REPRESENTED BY ITS DIVISIONAL MANAGER, BRANCH OFFICE, THIRUVALLA. BY ADV SRI.P.BHARATHAN SMT.K.S.SANTHI, SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has been filed by the claimant in O.P(MV) No.156 of 2012 on the file of the Motor Accidents Claims Tribunal-II, Alappuzha. The respondents herein were the respondents before the tribunal.

2. According to the appellant/claimant, on 13.11.2011 at 9.30 pm, while the appellant was travelling as a passenger in a car driven by her husband, they were hit by an innova car

bearing Reg.No.KL-07/BJ-6999 driven rashly by the 1 st respondent and thus, she sustained injuries. The appellant approached the tribunal claiming a total compensation of Rs.3,16,000/-.

3. The respondent insurer filed a written statement, admitting the policy, but disputing the quantum of

compensation claimed. Before the tribunal, the evidence consists of documentary evidence as Exts.A1 to A12 on the side of the appellant/claimant and Exts.X1 series to X4 as court exhibits. No evidence was adduced by the respondents. The tribunal, after analysing the pleadings and materials on record, awarded a sum of 3,40,156/- as compensation under different heads with interest @ 9% per annum from the date of petition the end of December, 2016 and thereafter 7% interest per annum till realization, against the second respondent being the insurer. Dissatisfied with the quantum of compensation awarded by the tribunal, the claimant has come up in appeal.

4. Heard the learned counsel for the appellant and the learned Standing Counsel for the respondent insurer.

5. The learned counsel for the appellant claims

enhancement mainly under the following heads; Income/notional income :- The learned counsel for the appellant submits that the appellant/claimant had claimed an

amount of Rs.20,000/- per month. Since there were no documents produced to prove the monthly income, the tribunal had considered only Rs.4,000/- per month. The learned counsel relied on the judgment of Apex Court in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [AIR 2011 SC 2951] and submitted that the tribunal ought to have taken the monthly income as Rs.8,000/- per month. It is seen that the avocation of the claimant is said to be

business, but there was no document to prove her avocation. Going by the judgment in Ramachandrappa (supra), I find that the notional income ought to have been taken as Rs.8,000/-. Accordingly, her notional income would be refixed at Rs.8,000/- Loss of earnings :- Since the notional income is refixed at Rs.8,000/-, the loss of earnings awarded by the tribunal has to be recalculated. Thus, the total amount under the said head will be Rs.24,000/- (Rs.8000x3). The tribunal has already awarded Rs.12,000/- and thus, there will be an additional amount of Rs.12,000/- under the said head. Compensation for permanent disability :- Since the notional income has been refixed at Rs.8,000/- and the tribunal had added 40% future prospects, the compensation under this head has to be recalculated. Therefore, the total compensation granted under the said head is to be Rs.4,04,275/- (11,200x12x16x18.8/100). Since the tribunal has already awarded Rs.2,02,132/-, there will be an additional amount of Rs.2,02,143/- under the said head.

6. Thus, the impugned award of the tribunal is modified

as follows; Sl. No Head of Claim Amount Amount Modified Total claimed awarded by in appeal compensation the tribunal 1 Loss of 90,000 12,000 12,000 24,000 earnings 2 Partial loss of Nil Nil Nil Nil earning

3	Transport to	7,000	5,000	(not
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articles 6 Others : Medical expenses and 50,000 64,024 (not 64,024 Bystander modified) expenses 10,000 3,000 3,000 7 Compensation 30,000 30,000 (not 30,000 for pain & modified) suffering 8 Compensation 1,00,000 2,02,132 2,02,143 4,04,275 for continuing permanent disability 9 Compensation for loss of earning power 10 Compensation 20,000 20,000 (not 20,000 for loss of modified) amenities TOTAL 3,16,000 3,40,156 2,14,143 5,54,299

Accordingly, the appeal is allowed and the appellant/claimant is awarded an additional compensation of Rs.2,14,143/- (Rupees two lakhs fourteen thousand one

hundred and forty three only) over and above the compensation awarded by the tribunal with interest @ 9% per annum from the date of petition till realization and proportionate costs. The respondent insurer shall deposit the said amount together with interest and costs within a period of two months from the date of receipt of a certified copy of this judgment. The claimant shall furnish copies of the PAN Card, AADHAAR Card and bank details before the respondent insurer within a period of one month so as to enable the insurance company to make the deposit as ordered above. In case of failure to furnish details as above, it shall be open for the insurance company to deposit the said amount before the tribunal. Upon such deposit being made, the entire amount shall be disbursed to the appellant at the earliest in accordance with law.

Sd/- SHOBA ANNAMMA EAPEN JUDGE SMA

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